IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

SUIT NO.861 OF 1990

Messrs Shah Hansraj Chhogmal & Co.
a partnership firm (since dissolved)
registered under the Indian Partnership Act,
carrying on business at 26, Ist Agiary Lane, Parsi Galli,
1st Floor, Bombay-400 003. .. Plaintiff

v/s.

1. Vemana Hari Prasad Rao,
son of Veerabadra Rao alias
Veerabadradu, an adult Indian Inhabitant
trading in the name and style of Prasad Cut-Pieces, as
Cloth Merchant previously at Seethamma
Lane, Rajahmundry, Andhra Pradesh and
now in at M.G. Whole-sale Cloth Complex,
Taditota, Rajahmundry-533 103, Andhra Pradesh.

2. emana Jagdish Kumar,
Son of Hariprasad Rao.

3. Vemana Labha Madhavi,
Daughter of Hariprasad Rao.

4. Vemana Geetanjali, .. Defendants
Daughter of Hariprasad Rao,

The efendant Nos.2 to 4 residing at
Jampet, Rajahmundry, Andhra Pradesh

Ms. Naziya Qureshi i/by M/s. Bharat Vaishnava & Co. for the plaintiff.
Plaintiff present in court.

CORAM : A.M. KHANWILKAR, J.
DATED : 13TH JULY, 2007

ORAL JUDGMENT

By this suit, the plaintiff claims the declaration that there is a valid and subsisting mortgage by depositing title deed as and by way of equitable mortgage in favour of the plaintiff in respect of the defendants' properties situated at Rajahmundry, Taluka Taditota, Andhra Pradesh which have been mortgaged for payment of the sum of Rs.2,27,000/- with further interest on the sum of Rs.2,27,000/- at the rate of 15% per annum from the date of institution of the suit till the repayment. This is the principal relief claimed in the suit. There are further incidental reliefs.

2. The background in which this suit has been filed is that the defendant No.1 was carrying on the business in the name and style of Prasad Cut Pieces. The defendant No.1 sued in his personal capacity and also as manager and karta of Vemana Hariprasad Rao, HUF. The defendant Nos.2,3 and 4 are sued as members of Vemana Hariprasad Rao, HUF. It is the plaintiff's case that prior to 16th November, 1982, defendant No.1 had commission agency alongwith M/s. Shah Raghunathji Hansraj, a sister concern of the plaintiff. As on 16th November, 1982, from the books of accounts, it appears that a sum of Rs.2,04,351/- was found due and payable by defendant No.1 to the said firm. The defendant No.1 proposed to do commission agency business of cloth piece goods with the plaintiff and those goods were purchased on credit. To secure the dues payable to the plaintiff and M/s. Shah Raghunathji Hansraj, equitable mortgage was created by the defendants in favour of the plaintiff and said M/s. Shah Raghunathji Hansraj on the properties of the said defendant. The plaintiff states that on/or about 16th November, 1982, the defendant No.1 was appointed as commission agent for supply of cloth piece goods on the terms and conditions mutually agreed upon between them. The defendant No.1 made part payments but at the end of 22 September, 1983 became liable to pay a sum of Rs.1,24,501/-. The sum and substance in the plaint is that on account of the

business transaction with the defendant No.1, the defendant was liable for a sum of Rs.2,27,000/- as would appear from the books of the accounts before the present suit came to be instituted. It is the case of the plaintiff that the defendants had committed to repayment of the outstanding amounts alongwith interest at the rate of 15% per annum. On these assertions, the present suit has been filed for the following reliefs:-

(a) That it may be declared that there is a valid and subsisting mortgage by deposit of title deed as and by way of equitable mortgage in favour of the plaintiffs of the defendants in respect of the properties situated at Rajahmundry Town, Rajahmundry, Taluka, Godavari District, Andhra Pradesh as more particularly described in Exhibit `A` hereto, for the payment of the said sum of Rs.2,27,000/- with further interest on the sum of Rs.2,27,000/- at the rate of 15% per annum from the date of the suit till payment;

(b) That it may be declared that the sum of Rs.2,27,000/- with interest on the sum of Rs.2,27,000/- at 15% per annum from the date of the suit till the date of redemption and further interest at the rate of 15% per annum from the date of redemption till the date of payment is due and payable by the defendant to the plaintiffs at the foot of the said equitable mortgage by deposit of title deeds as stated in prayer (a) above together with costs of the suit;

(c) That the defendant may be ordered and decreed to pay to the plaintiffs the said sum of Rs.2,27,000/- with further interest on Rs.2,27,000/- at the rate of 15% per annum from the date of the suit till the date of redemption which may be fixed by this Hon'ble Court;

(d) That in default of payment of the amount mentioned in prayer (b) above by the date to be fixed by this Hon'ble Court for the purpose of redemption the properties mortgaged to the plaintiffs and more particularly described in Exhibit `A' hereto be sold by and under the directions of this Hon'ble Court and the net sale proceeds thereof may be appropriated in payment of the

plaintiffs' claim in suit'

(e) That in the event of any deficiency, the defendants may be ordered to pay the amount of such deficiency.

(f) That pending the hearing and final disposal of this suit, Court Receiver, High Court, Bombay or some other fit and proper person be appointed Receiver of the said mortgaged properties more particularly described in Exhibit `A' hereto with all powers under Order 40, Rule 1 of the Code of Civil Procedure;

(g) That pending the hearing and final disposal of the suit, the Defendant his servants and agents be restrained by an order and injunction of this Hon'ble Court ;from in any manner, dealing with or disposing of, transferring or alienating, encumbering or parting with possession of the said properties more particularly described in Exhibit `A' hereto;

(h) That ad-interim reliefs may be granted to the plaintiffs in terms of prayers (f) and (g);

(i) That the Defendants may be ordered and decreed to pay to the plaintiffs their costs of this suit; and

(j) That the plaintiffs may be granted such further and other reliefs as the nature and circumstances of the case may requires;

3. This suit was instituted on 19th February, 1990. It is seen from the record that summons has been duly served on the defendants. In fact, the defendants who have represented by advocate M.V. Adhia applied for adjournment for filing written statement. However, no written statement has been filed. For that reason, the Prothonotary & Senior Master by order dated 7th June, 1995 has transferred the suit to the list of undefended suit. It is in this backdrop, the matter has now come up for hearing before me as undefended suit.

4. On the previous date, the plaintiff has tendered list of documents

alongwith the affidavit as also the affidavit of evidence sworn by Shri Pukhraj Chhogmal Shah dated 12th July, 2007. Besides the said Pukhraj Chhogmal Shah has appeared in court to give evidence. His evidence has been recorded in court. He has reiterated the stand taken in the affidavit of evidence which is to support the claim in the suit. Besides, he has proved all the relevant documents including the promissory notes. He has also proved the fact that legal notice was sent to the defendants to repay the outstanding amount but the defendants except paying a sum of Rs.31,000/- have remained defaulters. The plaintiff has given credit for repayment of the said amount of Rs.31,000/- in the books of accounts for the period between 3rd November, 1986 to 22nd October, 1987. Inspite of that, the defendants are liable to pay a sum of Rs.2,27,000/- to the plaintiff as would appear from the books of account as on 15th February, 1990. As the evidence of the plaintiff has remained unchallenged and the claim of the plaintiff is supported by the proved documents, this court has no option but to decree the suit in terms of prayer clauses (a) to (e) reproduced earlier. It cannot be doubted that the outstanding payment payable by the defendants to the plaintiff is on account of commercial transaction between them. The plaintiff has substantiated its stand that the agreed rate of interest is 15% per annum.

5. For all these reasons, this court has no option but to decree the suit in terms of prayer clauses (a) to (e) reproduced above. The plaintiff is also entitled for costs of this proceeding. Decree be drawn up accordingly.

(A.M. KHANWILKAR, J.)